

MINUTES OF DECEMBER 15, 2014

The regular meeting of the Sussex County Board of Adjustment was held on December 15, 2014, at 7:00 p.m. in the County Council Chambers, County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Jeff Hudson, Mr. Brent Workman, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members Lawrence Lank – Director of Planning and Zoning, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Minutes and Finding of Facts for October 20, 2014 as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11495 – Rocco Abessinio and Mary Abessinio – east of Route One (Coastal Highway) and being located at the southeast end of Heather Lane and being more specifically Lot 8 in Bethany Dunes Subdivision north of Bethany Beach (911 Address: 30980 Heather Lane, Bethany Beach, DE) (Tax Map I.D. 1-34-9.00-422.00)

An application for variances from the side yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Rocco Abessinio was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicants are requesting a variance of 0.5 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 6.7 feet from the ten (10) feet side yard setback requirement for existing steps and landing, and a variance of 3.5 feet from the ten (10) feet side yard setback requirement for an existing second level deck; that the Property is located in the Bethany Dunes subdivision; that the Applicants purchased the Property from a bank after a foreclosure in 1991; that the Applicants are selling the Property; that a survey completed for settlement showed the existing encroachments; that the Applicants have made no changes to the Property since purchasing it in 1991; that the Applicants did not create the encroachments; that the building permit was issued to a prior owner in 1983; that the Applicants

believe that all structures were built in 1983; that the encroachments were not discovered until the recent survey; that the variances are necessary to enable reasonable use of the Property; that the variances will not alter the essential character of the neighborhood; that the variances will allow the structures to remain in their current location; that the variances requested are the minimum variances necessary to afford relief; and that the Applicants were unaware of the encroachments until recently.

Mr. Abessinio, under oath, confirmed the statements made by Mr. Fuqua.

Mr. Lank advised the Board that the front yard of the Property is that portion of the lot along Heather Lane and that the portion of the lot that abuts to the adjacent Lot 9 is considered the side yard.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11495 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The irregular shape of the Property makes in unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances requested represent the least modification possible of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11496 – NVR Inc. (d/b/a Ryan Homes) – east of Angola Beach Road (Road 278) and being west of Herring Reach approximately 525 feet south of Inlet Breeze Drive and being Lot 109 within Bay Pointe Subdivision (911 Address: 23704 Herring Reach Court, Lewes, DE) (Tax Map I.D. 2-34-18.00-722.00)

An application for a variance from the rear yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Jeremy Treadwell, of Morris & Ritchie Associates, Inc., was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Fuqua stated that the Applicant is requesting a variance of 3.3 feet from the ten (10) feet rear yard setback requirement for an existing porch; that the Property is located in the Bay Pointe subdivision; that the Applicant is selling the home; that the Applicant builds homes in the development based off of several different models; that the Applicant built the dwelling; that the Applicant obtains a survey of each lot before beginning construction; that the surveyor staked out the location for the dwelling; that the Applicant constructed the dwelling based on the survey; that the encroachment was discovered when an as-built survey was completed for settlement; that the porch is enclosed and cannot encroach into the setback; that the Applicant used reasonable and best practices in laying out the dwelling; that the surveyor made the mistake prior to construction; that the surveyor based the location of the proposed dwelling with an open unenclosed porch which could encroach into the setback; that the enclosed porch was the plan from the start; that, unlike situations where a residential lot abuts another residential lot in the rear yard, the rear yard to this property borders a Storm Water Management and Wetlands area; that the nearest dwelling from the rear property line is over 100 feet away; that the good faith mistake created a unique situation; that the variance is necessary to enable reasonable use of the Property; that the porch is important to the purchasers of the Property; that removing a portion of the porch to comply with the setback requirements would provide little benefit while rendering the porch useless; that the difficulty was not created by the Applicant; that the variance will not alter the essential character of the neighborhood; and that the variance requested is the minimum variance to correct the mistake.

Mr. Treadwell, under oath, confirmed the statements made by Mr. Fuqua.

Gregory James of Ryan Homes was sworn in and testified that his company has built the majority of dwellings in the development; that this is the first variance request in the development; and that they have only one (1) lot left to sell in the development.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11496 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The error, size and shape of the lot make the Property unique;
2. That it would be costly to bring the porch into compliance with the Sussex County Zoning Code;

3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty and unnecessary hardship were not created by the Applicant;
5. The variance will not alter the essential character of the neighborhood; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11497 – Walter Foulkrod and Patricia Foulkrod – east of Route One (Coastal Highway) and being at the intersection of Gum Road and Ocean Road and being Lot 2B-3 Block 6 Section One within Sussex Shores Development (911 Address: 31889 Ocean Road, Bethany Beach, DE) (Tax Map I.D. 1-34-13.11-1.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Jack Mixler was sworn in to testify about the Application. James Fuqua, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits to the Board for review.

Mr. Fuqua stated that the Applicants are requesting a variance of 5.25 feet from the thirty (30) feet front yard setback requirement for a proposed elevator and mechanical room; that the Property is a corner lot in Sussex Shores; that the Property borders Gum Road and Ocean Road; that the Applicants own the adjacent lot to the east of the Property and the lot to the rear of the Property; that the dwelling is elevated and has stairs leading to the first floor level; that Mr. Foulkrod is older and now has a disability making navigating stairs difficult; that the proposed elevator will allow easier access to his home; that the lot is wooded and buffers the Property from the road; that land to the north has been approved for a five (5) lot subdivision; that the Homeowners Association supports the Application; that the corner lot makes the Property unique; that the closest lot affected by the variance is owned by the Applicants; that the variance will enable reasonable use of the Property; that the proposed location of the elevator will make it accessible from the existing driveway; that the difficulty was not created by the Applicants; that the variance will not alter the character of the neighborhood; and that the variance requested is the minimum variance to afford relief.

Mr. Mixler, under oath, confirmed the statements made by Mr. Fuqua.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11497 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because it is a corner lot;
2. The Applicants demonstrated that the elevator is needed to provide the Applicants with access to the dwelling;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty was not created by the Applicants;
5. The variance will not alter the essential character of the neighborhood;
6. The variance sought is the minimum variance necessary to afford relief; and
7. The variance represents the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11498 – John M. Smucker & Linda K. Smucker – southwest of Route 113 (DuPont Boulevard) approximately 1,400 feet south of Road 213 (McColley's Chapel Road) (911 Address: None Available) (Tax Map I.D. 1-35-9.00-28.00)

An application for a special use exception to place an off-premise sign and a variance from the minimum separation requirement from a residential zoning.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

John Smucker was sworn in to testify about the Application. David Hutt, Esquire, presented the case on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Hutt stated that the Applicants are requesting a special use exception to place an off-premise sign and a variance of seventy (70) feet from the three hundred (300) feet separation requirement from public lands; that the Property is located north of Georgetown near the intersection of Route 113 and Redden Road; that Delmarva Sheds is located on the Property; that the Applicants purchased the Property in 2008; that the Property is zoned C-1; that there are other billboards of various sizes in the area; that the proposed steel monopole structure will comply with square-footage, height and setback requirements; that there are no dwellings, churches, or schools within 300 feet of the proposed billboard; that a separation variance is needed from public lands,

which are owned by the State of Delaware located across the highway from the Property; that public lands are not defined in the Sussex County Code; that the lands across the highway are part of the Redden State Forest; that the proposed billboard is consistent with other billboards in the area which are also near lands owned by the State of Delaware; that there is no adverse effect on the lands owned by the State of Delaware; that there is a mixture of commercial and state lands surrounding the Property, which creates a unique situation; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicants; that the Applicant has no control over which lands the State of Delaware owns or controls; that the billboard will not alter the character of the neighborhood; that the billboard will not impair the uses of neighboring properties; that Delaware Department of Transportation (“DelDOT”) is only concerned with billboards adjacent to their property not properties across the street; that the variance requested is the minimum variance necessary to afford relief; that the proposed billboard will be sub-leased by the Applicants and will be leased upon completion of construction; and that the proposed location for the billboard offers the best sight line and does not interfere with existing structures on the Property.

Mr. Smucker, under oath, confirmed the statements made by Mr. Hutt as being true and correct.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception and Variance Application No. 11498 for the requested special use exception because the use does not substantially adversely affect the uses of the neighboring and adjacent properties and for the requested variance for the following reasons:

1. The mixed zoning throughout the area makes the Property unique;
2. The Applicants have no control over the location of lands owned by the State of Delaware;
3. The variance is necessary to enable reasonable use of the Property;
4. The exceptional practical difficulty and unnecessary hardship were not created by the Applicants;
5. The variance will not alter the essential character of the neighborhood as there are other similar signs in the area; and
6. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the special use exception and the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Workman – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Case No. 11499 – Heath Bradley Weaver and John Joseph Mackey – northwest of Eleanor Lee Lane East, approximately 1,150 feet northeast of Corkran Boulevard and being Lot 47 in Canal Corkran Residential Planned Community (911 Address: 29 Eleanor Lee Lane, Rehoboth Beach, DE) (Tax Map I.D. 3-34-13.00-1344.00)

An application for a variance from the front yard setback requirement.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application and had not received any correspondence in opposition to the Application.

Andrew Staton was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Applicants and submitted a photograph for the Board to review.

Mr. Meredith stated that the Applicants are requesting a variance of 0.4 feet from the thirty (30) feet front yard setback requirement for an existing dwelling; that the Property is located in the Canal Corkran development; that a survey completed in 2002 shows no encroachments; that a more recent survey shows an encroachment into the front yard setback; that the Certificate of Compliance was issued in 2003; that the Applicants did not build the dwelling nor did they own the Property in 2003; that the encroachment cannot be noticed by the naked eye; that neighboring homes are similarly situated; that the Property has unique circumstances and conditions; that the two (2) surveys create a unique situation; that the need for the variance was not discovered for more than 10 years; that the variance is necessary to enable reasonable use of the Property; that there would be a cost to bring the home into compliance with the Code with little to no benefit to neighboring properties; that the Property is already developed; that an exceptional practical difficulty exists and was not created by the Applicants; that the variance will not alter the essential character of the neighborhood; that the variance will not permanently impair the uses of neighboring properties; that the variance is not detrimental to the public welfare; that the variance is the minimum variance to afford relief; and that the variance represents the least modification of the regulation at issue.

Andrew Staton testified that he has been a real estate agent in the area for twelve (12) years; that he is familiar with the Property; that there will not be an adverse effect to the values of neighboring properties; and that he confirms the statements made by Mr. Meredith as true and correct.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11499 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique because a Certificate of Compliance was previously issued;
2. The variance is necessary to enable reasonable use of the Property;
3. The unnecessary hardship was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11500 – Michael Mather & Melissa Mather – south of Route 54 (Lighthouse Road) and being east of Wilson Avenue approximately 700 feet south of Lincoln Drive and being more specifically Lot 10 Block 3 within Cape Windsor Subdivision (911 Address: 38811 Wilson Avenue Ext., Selbyville, DE) (Tax Map I.D. 5-33-12.18-152.00)

An application for variances from the side yard and rear yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Michael Mather was sworn in and testified requesting a variance of 5.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of eight (8) feet from the ten (10) feet side yard setback requirement for an existing HVAC unit, and a variance of 2.6 feet from the twenty (20) feet rear yard setback requirement for an existing dwelling; that a special use exception was granted by the Board in 1983 to place a modular home on the Property; that a dwelling was placed on the Property in 1983; that he discovered the need for the variances when he applied for a building permit to construct an addition; that the Property has been sold four (4) times since 1983; that he plans to raise the dwelling and build a garage underneath to provide protection from the weather when transporting his handicapped son; that the dwelling will be extended in the front yard and side yard but will comply with the setback requirements on those portions of the Property; that the garage will also provide storage; that the variances will not alter the essential character of the neighborhood; that the variances will not be detrimental to the public welfare; that the proposal will not affect the views from his neighbors' properties; that the proposed additions will comply with all required setbacks; that the structures will not affect his neighbors' views; that the HVAC unit has also been there since 1983 and will stay in its current location; and that none of the additions will encroach into the setback areas.

Mr. Lank advised the Board that Cape Windsor was developed as a mobile home community; that the front yard setback is five (5) feet; that the side yard setbacks are ten (10) feet; and that the rear yard setback is twenty (20) feet.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Variance Application No. 11501 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique since the encroachments have existed since 1983;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The dwelling was placed on the Property by a prior owner;
5. The variances will not be detrimental to the public welfare; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11501 – James Ahern – south of Route 54 (Lighthouse Road) and being east of Grant Avenue approximately 1,117 feet south of Lincoln Drive and being Lot 22 Block 6 within Cape Windsor Subdivision (911 Address: 38827 Grant Avenue, Selbyville, DE)(Tax Map I.D. 5-33-20.18-56.00)

An application for variances from the side yard and rear yard setback requirements.

Mr. Lank presented the case and stated that the Office of Planning and Zoning received one (1) letter in opposition to the Application from Irma Codey and had not received any correspondence in support of the Application.

James Ahern was sworn in and testified requesting a variance of five (5) feet from the ten (10) feet side yard setback requirement for a proposed dwelling, a variance of eight (8) feet from the ten (10) feet side yard setback requirement for a proposed HVAC unit, propane tank and outside shower, and a variance of five (5) feet from the twenty (20) feet rear yard setback requirement for a proposed dwelling; that he purchased the Property in 2004 with his brother; that he bought his brother's interest in 2012; that the existing manufactured home was placed in the 1970s; that additions were added in the 1980s; that the need for the variances is caused by the narrowness of the Property; that the standard side yard setback in Cape Windsor is five (5) feet on the north side and ten (10) feet on the south side; that he originally intended to construct the garage after the house was built; that he now intends to construct the garage first so as to secure storage on the Property during construction; that he will serve as the contractor on this construction but will subcontract out certain components; that the existing manufactured home is only 4.3 feet from

the northern property line; that the HVAC system, outdoor shower, and propane tank will be located on the north side of the Property; that he failed to include on the survey the stairs that will lead from the outside shower to the proposed utility room; that the screen porch will be enclosed; that the Property is unique; that the narrowness of the Property creates the need for the variance; that the Property could be built in strict conformity but a smaller dwelling would not meet his family's needs; that the variances are necessary for the reasonable use of the Property; that the variances will not alter the essential character of the neighborhood; that the variances will not impair the uses of neighboring and adjacent properties; that the variances will not be detrimental to the public welfare; that he is replacing a dilapidated structure with a nicer home; that the variances represent the least modifications of the regulations at issue; that the variances are the minimum variances necessary to afford relief; that the proposed dwelling will have 1,570 square-feet of living space; that the steps from the outdoor shower will not encroach any further than the proposed outside shower; that he is seeking a variance of five (5) feet on the north side of the Property for the house and garage; that he is seeking a variance of five (5) feet on the east side of the Property for the house, porch, and deck; that he needs a variance of eight (8) feet from the rear property line for the steps from the deck; that the open deck does not require a variance; that the proposed deck shows the steps incorporated with the deck; that he now wants to place the steps at the rear of the Property and further encroach further in the rear yard; that the rear property line is located a few feet into the canal; that the Property is 90+/- feet deep; that the deck is twelve (12) feet deep; that his house will be further from the bulkhead than houses on neighboring lots; that he wants to retain access to the bulkhead on the south side of the Property which is why he does not want to put the stairs to the deck on that side of the lot; that the shower will be elevated, that he requests a variance of eight (8) feet from the rear yard setback for the stairs to the deck, a variance of five (5) feet from the rear yard setback for the house and porch, a variance of eight (8) feet from the north side yard setback for the HVAC, propane tanks, stairs, and outdoor show, and a variance of five (5) feet from the north side yard setback for the garage and dwelling; that the proposed garage shown on his application will now be built and he wants to include it in his request; that he has not decided on whether the garage will be attached to the dwelling or detached; that he does not intend to have a direct access from the house to the garage; that the garage will have a foundation; that the garage will measure under 600 square-feet; that he senses that the garage and the house will be separate structures but he has not confirmed his intent with his architect; that the garage is only one (1) story tall; that he plans to use the garage to store building materials; and that he wants to assume that the garage is attached for purposes of this application.

Irma Codey was sworn in and testified in opposition to the Application and testified that she has concerns because the Applicant has changed his request; that she owns the adjacent Lot 23; that her lot is only 86 feet deep; that she built her home in strict conformity to the Sussex County Code; that the Applicant's proposed dwelling will alter the essential character of the neighborhood; that the proposed dwelling is different from the normal houses in the neighborhood; that the Applicant plans to build the dwelling himself; that the Applicant is creating his own difficulty; that most of the homes in the neighborhood are 28 feet wide; that she is unaware of steps from outdoor showers in the neighborhood; that the Applicant did not meet the standards for

granting a variance; and that the Applicant should build a dwelling more customary for the neighborhood.

William Raither was sworn in and testified about the Application and testified that there seems to be a lot of confusion in reference to the Application; that he is concerned about the location of the proposed outside shower, HVAC unit and propane tank; that if the shower, HVAC system and propane tank are two (2) feet from the property line, he is okay with variances; and that he has no issue with the proposed variances.

The Board found that one (1) party appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously to take the case under advisement. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

At the conclusion of the public hearing, the Chairman referred back to this case. Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to **leave the case open until January 26, 2015, for the limited purpose of allowing the Applicant to submit a revised survey of the Property to show the exact variances being requested.** Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Mills – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

The Board took a ten (10) minute recess.

Case No. 11502 – Charles Straughan & Mary Lou Straughan – west of Bunting Road approximately 132 feet south of Lighthouse Road (Route 54) and approximately 66 feet north of Fenwick Avenue (State Line Road) and being in the unincorporated area of Fenwick Island (911 Address: 38956 Bunting Avenue, Fenwick Island, DE) (Tax Map I.D. 1-34-23.20-164.00)

An application for variances from the front yard, side yard, and maximum height requirements for a dwelling.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Charles Straughan and Mary Lou Straughan were sworn in and testified requesting a variance of 20.3 feet from the thirty (30) feet front yard setback requirement for an existing dwelling, a variance of 8.4 feet from the ten (10) feet side yard setback requirement for an existing dwelling, a variance of 8.2 feet from the ten (10) feet side yard setback requirement for an existing dwelling, and a request to raise the existing dwelling four (4) feet.

Mr. Straughan testified that the existing dwelling was built in 1946; that his family purchased the Property in 1947; that he and his brother inherited the property in 2007; that he purchased the Property a year later; that the lot is only 32 feet wide; that the dwelling is 24.3 feet wide at its widest point; that the Applicants plan to raise the existing dwelling and decks by four (4) feet; that the Property is unique due to its size and the fact that the dwelling was built in 1946; that the interior of the dwelling was completely renovated in 2009; that the existing footprint of the dwelling has never changed; that the decks were built in the late 1970s or early 1980s; that the dwelling will be raised to a height similar to other homes in the neighborhood; that there have been no objections from the neighbors; that the hardship was not created by the Applicants; that the variances will not alter the character of the neighborhood; that raising the dwelling will prevent further water damage; that the dwelling will be under 42 feet tall; and that the stairs will not encroach any further into the setback areas.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11502 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique because the dwelling was built in 1946 and the decks have been there for many years;
2. The variances are necessary to enable reasonable use of the Property;
3. The Property is in a flood zone;
4. The unnecessary hardship and exceptional practical difficulty were not created by the Applicants;
5. The variances will not alter the essential character of the neighborhood; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11503 – Teresa M. Barnes – south of Burbage Road (Road 353) approximately 2,200 feet east of Jones Road (Road 369) (911 Address: 32752 Burbage Road, Frankford, DE) (Tax Map I.D. 1-34-15.00-3.04)

An application for a special use exception for a manufactured home due to a medical hardship.

Mr. Lank presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Teresa Barnes was sworn in and testified requesting a special use exception for a manufactured home due to a medical hardship; that her mother and sister are disabled and need care; that she will be taking care of her mother and her sister; that the septic system has been approved for up to five (5) bedrooms; that the proposed manufactured home will measure 16 feet by 72 feet; that the unit will not be seen from the road; that the unit will be approximately 350 feet from the road; that the nearest neighbor is over 200 feet from the Property; that the proposed unit will meet all setback requirements; that she plans to plant fast-growing trees to shield the visibility of the house; that the use will not substantially adversely affect the uses of adjacent and neighboring properties; and that the manufactured home is a brand new model.

The Board found that two (2) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Special Use Exception Application No. 11503 for the requested special use exception for a period of two (2) years based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for the reasons stated for a period of two (2) years**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11504 – Loblolly, LLC – west of Coastal Highway (Route One) and north of Route 5 (Union Street Extended) (911 Address: None Available) (Tax Map I.D. 2-35-7.00-43.00)

An application for a special use exception to place two (2) off-premise signs and variances from the maximum square footage, height, side yard setback requirements and the minimum separation requirement between off-premise signs.

Zachary Crouch and Sam Calagione were sworn in to testify about the Application. Mark Dunkle, Esquire, presented the case to the Board on behalf of the Applicant and submitted exhibits for the Board to review.

Mr. Dunkle stated that the Applicant is requesting a special use exception for two (2) off-premise signs, a variance of three hundred (300) square-feet from the three hundred (300) square-foot requirement each side for an off-premise sign #1, a variance of three hundred (300) square-feet from the three hundred (300) square-feet for off-premise sign #2, a variance of fifteen (15) feet from the twenty five (25) feet maximum height requirement for both proposed off-premise signs, a variance of forty (40) feet from the fifty (50) feet side yard setback requirement for proposed off-premise sign #2, and a variance of fifty (50) feet from the three hundred (300) feet separation requirement between off-premise signs; that Mr. Calagione is a prospective tenant for the billboard; that the billboards will not substantially adversely affect the uses of neighboring and adjacent properties; and that a letter of no objection has been received from the State of Delaware, which owns the neighboring property.

Mr. Crouch testified that the Applicant seeks approval for two billboards – a double-sided billboard identified as Billboard #1 and a single-sided billboard identified as Billboard #2; that the Property was once used for canoe rentals many years ago but has been vacant for quite some time; that the Property is zoned commercial; that the Property is unique as it is located at the intersection of Route 1 and Route 5 which limits access to the Property; that the Property is adjacent to Waples Mill Pond and wetlands; that the Applicant has been in contact with DelDOT about access to the Property; that DelDOT will only give very limited access approval from Route 5 to the Property; that DelDOT has a safety concern about providing access from Route 1; that the Applicant would have to purchase surrounding property in order to gain approval from DelDOT for access; that DelDOT based its access limitations to a use that would provide only 200 trips per day which is not a lot of trips for a commercial use; that the Applicant explored other uses for the Property; that the billboards have the least traffic impact from the Property; that the Property has very limited uses due to DelDOT limitations; that the proposed billboards would not require a commercial entrance from DelDOT; that the frontages on Route 5 and Route 1 limit access to the Property; that the Property cannot be built in strict conformity with the Sussex County Code; that the billboard will provide a source of income for the Property while not requiring greater access; that the variances are requested due to the uniqueness of the Property; that the Applicant contacted the State of Delaware about purchasing adjacent lands to eliminate the need for some of the variances and to provide greater visibility of the billboards; that the State of Delaware could not sell any additional land to the Applicant due to existing grants used by the State of Delaware to purchase the Property; that the grants also limit the State's authority to grant an easement to the Applicant or to trim the trees on the State's property which block views of the billboards; that the speed limit on Route 1 is 55 miles per hour but cars drive faster there; that the proposed locations, height and square-footage of the proposed billboards will provide the best visibility from Route One; that the exceptional narrowness of the Property and the limitations implemented by DelDOT create a unique situation to the Property; that the Applicant has not created the difficulty; that the variances

will enable reasonable use of the Property; that the variances will not alter the essential character of the neighborhood; that Coastal Wine & Spirits and Brumbley's Mobile Home Park are located across Route 1; that vacant State lands are located nearby; that the variances will allow the Property to be used with minimum impact; that the use will not be detrimental to the public welfare; that the variances are the minimum variances to afford relief; and that the use will not substantially affect adversely the uses of the neighboring and adjacent properties.

Sam Calagione testified that he owns Dogfish Head Brewery; that his facility in Milton averages 1,000 visitors per week; that it is difficult to find the brewery and that this difficulty creates traffic problems; that the proposed off-premise signs will help direct the public to the downtown Milton area and the local businesses; that the size of the signs is needed for visibility to passing traffic due to the speed of the traffic; and that a smaller sign would not be effective.

Mr. Dunkle stated that the signs will be leased.

Lisa Sumstein was sworn in and testified in support of the Application and testified that she is the director of the Milton Chamber of Commerce; that she believes the proposed billboards will have a positive impact to the Town of Milton by directing patrons to Milton; and that the billboards will contribute to additional revenue to the town's small businesses.

Harry Holtgrewe was sworn in and testified in opposition to the Application and testified that he lives near Waples Pond; that the lights from the existing liquor store shine in his window; that he does not think the lights from the billboards will be obscured; that the billboards impact his property in a negative way; that the billboards will distract drivers from the busy intersection where cars leave the liquor store and Brumbley's Mobile Home Park; and that he heard the Applicant plans to erect thirty-eight (38) more billboards in the area.

The Board found that one (1) party appeared in support of the Application.

The Board found that one (1) party appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be **tabled until January 5, 2015**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 11476 – Donald E. Radcliffe & Karen A. Radcliffe – northeast of Road 298 (Legion Road) and being southeast corner of Joanne Drive and Stacey Drive and being Lot 34 within John

Burton Manor Subdivision (911 Address: 220 Joanne Drive, Millsboro, DE) (Tax Map I.D. 2-34-29.00-863.00)

An application for a special use exception for a recovery home.

Mr. Workman did not hear the public hearing held on December 1, 2014, so he left the chambers and did not participate in any discussion.

The Board discussed the case, which has been tabled since December 1, 2014.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to table the case until January 5, 2015. Motion carried 4– 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, and Mr. Callaway – yea.

Meeting Adjourned 11:05 p.m.